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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

11 XAO THAO, No. 2:23-cv-02563-DJC-CKD  
12 Plaintiff,  
13 v. ORDER  
14 COUNTY OF SISKIYOU,  
15 Defendant.

18 Plaintiff Xao Thao has sued the County of Siskiyou for alleged violations of  
19 federal and state law in connection with a 2022 incident in which Plaintiff was taken  
20 into custody by the Siskiyou County Sheriff's Office ("SCSO") Deputies during the  
21 execution of a search warrant on a parcel of land near Plaintiff's purported residence.  
22 Plaintiff's claims are exclusively brought against Defendant County of Siskiyou.  
23 Presently before the Court is Defendant's Motion for Summary Judgment. (ECF No.  
24 11.) For the reasons stated below, Defendant's Motion is granted in full.

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## BACKGROUND

2 Plaintiff alleges that on August 16, 2022, SCSO Deputies executed search  
3 warrants on a property near his home.<sup>1</sup> (Compl. (ECF No. 1) at 3.) Plaintiff claims that  
4 he saw the deputies arrive and walked down the hill to an adjacent vacant parcel to  
5 observe the deputies. (*Id.*) Plaintiff asserts that he was subsequently followed back to  
6 his house by SCSO Deputies who cut through Plaintiff's fence, pinned him down,  
7 placed a foot on his head and neck, handcuffed him, and kicked him in the ribs. (*Id.*)  
8 Plaintiff claims that his wife was also punched in the stomach and kneed in the leg.  
9 (*Id.*) Plaintiff alleges that as a result of these incidents, he experienced injuries,  
10 including a blood clot in his neck, that resulted in neck and chest pain. (*Id.* at 4.)

11 The sole named Defendant in Plaintiff's Complaint is the County of Siskiyou.  
12 (*Id.* at 1-2.) Plaintiff brings three causes of action under 42 U.S.C. § 1983 for violations  
13 of Plaintiff's constitutional rights. (*Id.* at 4-6.) Plaintiff brings an additional three causes  
14 of action for alleged violations of state law. (*Id.* 6-7.)

15           Defendant now seeks summary judgment as to Plaintiff's federal claims mainly  
16 on the ground that Plaintiff established liability under *Monell*, and Plaintiff's state  
17 claims on the ground that Defendant has immunity for the alleged violations of state  
18 law. Briefing of Defendant's Motion is now complete. (Mot. (ECF No. 11-1); Opp'n  
19 (ECF No. 13-1); Reply (ECF No. 14).) This matter was taken under submission pursuant  
20 to Local Rule 230(g). (ECF No. 15.)

## LEGAL STANDARD

22 Summary judgment may be granted when the evidence shows that there is no  
23 genuine issue as to any material fact and the moving party is entitled to a judgment as  
24 a matter of law. Fed. R. Civ. P. 56(c). The principal purpose of summary judgment is  
25 to dispose of factually unsupported claims or defenses. *Celotex Corp. v. Catrett*, 477  
26 U.S. 317, 325 (1986). Therefore, the “threshold inquiry” is whether there are any

<sup>27</sup> 1 This is the allegation in Plaintiff's Complaint. (Compl. at 3.) While subsequent testimony revealed that  
<sup>28</sup> Plaintiff likely did not reside there, this is ultimately irrelevant for purposes of this Order.

1 factual issues that could reasonably be resolved in favor of either party, or conversely,  
2 whether the facts are so one-sided that one party must prevail as a matter of law.  
3 *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250-52 (1986). However, “[o]nly  
4 disputes over facts that might affect the outcome of the suit under the governing law  
5 will properly preclude the entry of summary judgment.” *Id.* at 248.

6 In a summary judgment motion, the moving party must inform the court of the  
7 basis for the motion and identify the portion of the record that it believes  
8 demonstrates the absence of a genuine issue of material fact. *Celotex*, 477 U.S. at  
9 323. If the moving party meets its initial burden, the burden then shifts to the  
10 opposing party, which must establish that there is a genuine issue of material fact.  
11 *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 585 (1986). To meet  
12 their burden, parties must either cite to materials in the record supporting their  
13 position or show that the materials cited do not establish the absence or presence of a  
14 genuine dispute. Fed. R. Civ. P. 56(c)(1).

15 For the opposing party to succeed and avoid summary judgment, they “must  
16 do more than simply show that there is some metaphysical doubt as to the material  
17 facts.” *Matsushita*, 475 U.S. at 586. Rather, the opposing party must produce enough  
18 evidence such that the specific facts set forth by the nonmoving party, coupled with  
19 undisputed background or facts, are such that a reasonable jury might return a verdict  
20 in its favor. *T.W. Elec. Serv., Inc. v. Pac. Elec. Contractors Ass’n*, 809 F.2d 626, 631 (9th  
21 Cir. 1987). In other words, for the moving party to succeed, the court must conclude  
22 that no rational trier of fact could find for the opposing party. *Matsushita*, 475 U.S. at  
23 587. However, so as not to usurp the role of the jury, “[c]redibility determinations, the  
24 weighing of the evidence, and the drawing of legitimate inferences from the facts are  
25 jury functions,” and so the court draws all reasonable inferences and views all  
26 evidence in the light most favorable to the opposing party. *Liberty Lobby*, 477 U.S. at  
27 255; *Matsushita*, 475 U.S. at 587-88.

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**DISCUSSION****I. *Monell* Liability under Section 1983**

Under the Supreme Court's decision in *Monell v. Department of Social Services*, 436 U.S. 658 (1978), local governments may be held liable under section 1983 for wrongs done by the local government itself. A municipality or other local government entity is subject to *Monell* liability when that government, "under color of some official policy, 'causes' an employee to violate another's constitutional rights." *Monell*, 436 U.S. at 692. A municipality, however, cannot be held liable solely for the purported constitutional violations of its employees, "or, in other words, a municipality cannot be held liable under [section] 1983 on a *respondeat superior* theory." *Id.* at 691. The municipality itself must have acted through an official municipal policy or custom. *Id.* at 694. The Ninth Circuit has recognized four theories for establishing municipal liability under *Monell*: "(1) an official policy; (2) a pervasive practice or custom; (3) a failure to train, supervise, or discipline; or (4) a decision or act by a final policymaker." *Horton by Horton v. City of Santa Maria*, 915 F.3d 592, 602-03 (9th Cir. 2019).

Plaintiff claims that Defendant violated Plaintiff's rights under the Equal Protection Clause, the Fourth Amendment, and the Fifth Amendment. In asserting liability against the County for these violations, Plaintiff must establish that Defendant had a policy or custom. Based on the Complaint, Plaintiff's claim seems to be that Defendant's policies and procedures were expressly designed to target Hmong Americans. (See Compl. at 5-6.) However, as Defendant correctly notes, Plaintiff has presented no evidence to support this allegation. In his Opposition, Plaintiff states that "Plaintiff has presented evidence of a pattern of discriminatory enforcement practices by Siskiyou County targeting members of the Hmong community[.]" (Opp'n at 7.) But fails to provide any citation to such evidence. Plaintiff also suggests that he has "identified deficiencies in the County's supervision and enforcement of its own anti-discrimination and body-worn camera policies." (*Id.*) But again, Plaintiff fails to provide any citation to evidence supporting this claim. As far as the Court can tell,

1 Plaintiff's claim regarding the deficiencies in the usage of body cameras is based  
2 entirely on deputies' alleged failures to activate body cameras in connection with the  
3 incident at issue in this case.<sup>2</sup> (See *id.* ("Specifically, in this case, multiple deputies  
4 failed to activate their cameras during a violent seizure—an omission consistent with a  
5 broader pattern of unchecked misconduct.").) Plaintiff cannot predicate *Monell* claims  
6 based solely on the events of the incident in question. See *Trevino v. Gates*, 99 F.3d  
7 911, 918 (9th Cir. 1996).

8 Plaintiff's Statement of Undisputed Facts likewise does not suggest Plaintiff has  
9 any evidence to support his *Monell* claims. Of the four statements of fact Plaintiff  
10 provides, only the first has any possible connection to establishing a policy or custom  
11 in the County of Siskiyou. That factual allegation is that "Siskiyou County has been  
12 sued by the ACLU for discriminatory enforcement targeting Hmong residents." (PSUF  
13 ¶ 101.) Plaintiff's only supporting evidence for this are allegations made in a separate  
14 case, *Chang v. County of Siskiyou, et al.*, No. 2:22-cv-01378. Specifically, Plaintiff  
15 states that the plaintiffs in that case alleged that:

16 Siskiyou County and its Sheriff Jeremiah LaRue . . . are  
17 engaged in a sweeping campaign to harass and intimidate  
18 Hmong and other Asian Americans. In service of this  
19 agreed upon campaign, the Defendants have used  
20 widespread and coordinated racial profiling in traffic stops,  
21 restricted access to water making it difficult for Asian  
American residents to live, and placed unlawful liens to  
dispossess Asian Americans of their land.

22 (*Id.*) The complaint cited by Plaintiffs goes on to note other related information, such  
23 as that Asian American neighborhoods have been targeted in connection with

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25 <sup>2</sup> Though the Court need not reach this issue, it also appears that this allegation is entirely unsupported  
26 by any evidence. The only evidence presented by Plaintiff was his deposition during which Plaintiff  
27 provided no testimony or evidence regarding the usage of body cameras during the incident at issue.  
Moreover, in Plaintiff's Statement of Undisputed Facts ("PSUF"), Plaintiff does not attempt to assert any  
facts regarding the usage of body cameras during this incident. (See PSUF (ECF No. 13-2).) This lack of  
evidentiary support further emphasizes that Plaintiff lacks sufficient evidence to support his *Monell*  
claims.

1 cannabis cultivation and that Asian American drivers are stopped "at a rate roughly  
2 twelve times greater than their proportion of the driving-age population." (*Id.*)

3 This singular factual allegation – that Siskiyou County has been sued by the  
4 ACLU for discriminatory enforcement targeting Hmong residents – is insufficient to  
5 support the full weight of Plaintiff's *Monell* claims on its own. Plaintiff relies on  
6 allegations made in a single case with no citations to any evidentiary support  
7 underlying or supporting this allegation. This does not establish practices of sufficient  
8 frequency and consistency to establish a custom for purposes of *Monell* liability.  
9 *Trevino*, 99 F.3d at 918. Moreover, these allegations concern profiling during traffic  
10 stops as well as restrictions on water and liens placed on Asian American lands. They  
11 bear no connection to the present case besides the general similarities that Plaintiff is  
12 a Hmong American in Siskiyou County, and these allegations concern discrimination  
13 against Hmong Americans in the County.

14 To be clear, it is entirely possible that Hmong Americans, including Plaintiff, are  
15 subject to discriminatory conduct in Siskiyou County. But at the summary judgment  
16 stage Plaintiff cannot rest his *Monell* claims entirely on his own conclusory claims of  
17 discrimination, the events at issue in this case, and vaguely related allegations of  
18 discriminatory conduct that arose in other situations. See *Stewart v. Block*, 938 F.  
19 Supp. 582, 590 (C.D. Cal. 1996) (bare and conclusory allegations insufficient to raise  
20 an issue of material fact as to the existence of a policy); see also *Bethune v. City of*  
21 *Washougal*, 642 F. Supp. 3d 1246, 1252 (W.D. Wash. 2022) (rejecting *Monell* claims  
22 that "rest on mere conclusory allegations."). Defendant has met their burden to show  
23 an absence of evidence supporting Plaintiff's claims, and Plaintiff has failed to present  
24 any evidence supporting that there was a policy, practice, or procedure in the County  
25 that led to the alleged violations of Plaintiff's Constitutional rights in this case. As such,  
26 there is not a genuine dispute of material fact on this issue, and Defendants are  
27 entitled to judgment as a matter of law.

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**II. Immunity from State Law Claims Under California Government Code****Section 815**

Under section 815(a), Defendant has immunity from claims arising out of the act or omission of the County or its employees. See *Miklosy v. Regents of Univ. of Cal.*, 44 Cal. 4th 876, 899 (2008) ("section 815 abolishes common law tort liability for public entities"). Section 815(a) renders Defendant immune to Plaintiff's claims unless a statute specifically authorizes liability. *Van Ort v. Estate of Stanewich*, 92 F.3d 831, 840 (9th Cir. 1996) ("In California, a governmental entity can only be sued in tort pursuant to an authorizing statute or enactment."). Defendant argues that this bars Plaintiff's state law claims. (Mot. at 10.)

In Opposition, Plaintiff cites Government Code section 820 "and related doctrines" to assert that section 815 does not render Defendant immune to Plaintiff's state law claims. Section 820(a) provides "[e]xcept as otherwise provided by statute (including Section 820.2), a public employee is liable for injury caused by his act or omission to the same extent as a private person." This section provides liability for public employees. It does not provide a pathway for liability for public entities such as Defendant.

However, Plaintiff also references the possibility that Defendant is "liable for the acts of its employees committed within the scope of employment." (Opp'n at 8.) This seems intended to be a reference to Government Code section 815.2. Section 815.2 only provides for vicarious liability for torts committed by an employee within the scope of their employment; it does not provide direct liability for a public entity. See Cal. Gov't Code § 815.2; see also *Cardinal v. Buchnoff*, No. 06-cv-00072-MMA-BLM, 2010 WL 3609489, at \*1 (S.D. Cal. Sept. 14, 2010). Thus, section 815.2 only provides liability to the extent that a plaintiff establishes the liability of a public entity's employee.

Plaintiff has not established liability for any of Defendant's employees here. The only evidence cited by Plaintiff in support of his claims during his deposition testimony

1 in which Plaintiff largely responded "I plead the Fifth Amendment" to questions  
2 regarding the facts at issue in this case.<sup>3</sup> The only testimony about the incident in  
3 question that Plaintiff provided was that two people had chased him (Pl's Dep. (ECF  
4 No. 11-4) at 20:4-24) and that when they eventually intercepted Plaintiff, his face was  
5 pushed into the ground, his neck was stepped on for about two to three minutes, that  
6 his thighs were kicked (*id.* at 21:6-10, 21:18-21:12, 22:10-14). Plaintiff did not identify  
7 who committed these actions and even disavowed any knowledge of whether the  
8 individuals were law enforcement. (*Id.* at 20:4-12; see *id.* at 20:18-22 ("I didn't know  
9 who it was. I was just scared, so I just ran."); see also *id.* at 21:14-17 ("Q. 'So these  
10 people that chased you and took you down and kicked you, they were not law  
11 enforcement; is that your story?' A. 'I plead the Fifth Amendment.'"). With only this  
12 testimony by Plaintiff and no further evidence presented, it is impossible to determine  
13 if Defendant's employees have any involvement with, or liability from, the injuries  
14 alleged by Plaintiff.

15 Given the above, Defendant is entitled to immunity under section 815. Plaintiff  
16 has not presented any evidence that establishes that any exceptions to that rule are  
17 applicable. As such, Defendant is also entitled to judgment as a matter of law as to  
18 Plaintiff's state law claims.

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26 <sup>3</sup> Notably, Plaintiff invoked the Fifth Amendment and refused to testify regarding many allegations  
27 Plaintiff himself made in the Complaint. See *S.E.C. v. Colello*, 139 F.3d 674, 677 (9th Cir. 1998) ("Parties  
28 are free to invoke the Fifth Amendment in civil cases, but [in civil proceedings] the court is equally free  
to draw adverse inferences from their failure of proof.").

1 **CONCLUSION**

2 For the reasons stated above, IT IS HEREBY ORDERED that:

- 3 1. Defendant's Motion for Summary Judgment (ECF No. 11) is GRANTED;  
4 2. Judgment is entered in Defendant's favor; and  
5 3. The Clerk of the Court is directed to close this case.

6 IT IS SO ORDERED.

7 Dated: September 2, 2025

  
Hon. Daniel J. Calabretta  
UNITED STATES DISTRICT JUDGE

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